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How You Can Use It [the 1c Street Aid Revenue]

Municipal Technical Advisory Service

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THE UNIVERSITY OF TENNESSEE
DIVISION OF UNIVERSITY EXTENSION
MUNICIPAL TECHNICAL ADVISORY SERVICE
226 CAPITOL BLVD., NASHVILLE 3, TENN.

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TAXES - GAS + MOTOR
FUEL, STATE
MF



Now you can
use it*

* the 1¢ Street Aid Revenue

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1¢ gasoline tax distribution for 1953-54
is based on this total population:

1,446,547.

1¢ money may be used to maintain roads in a
city park, says Cliff Greenwood.

1¢ money may not be used for financing
public parking lots, says Cliff Greenwood.

this material

has been prepared by the

MUNICIPAL TECHNICAL ADVISORY SERVICE

of the

DIVISION OF UNIVERSITY EXTENSION,

THE UNIVERSITY OF TENNESSEE, KNOXVILLE.

In cooperation with the

TENNESSEE MUNICIPAL LEAGUE.

April 1953.

Answers to city officials' Questions about the 1¢ measure

Q: What Act made state gasoline tax money available to cities?

A: Chapter 1 of the Public Acts of 1953, which became law on February 19, 1953.

TCA 54-406

Q: What is the effective date of this Act?

A: July 1, 1953.

Q: How much of the state gasoline tax is allocated to cities?

A: The proceeds of one cent of this tax, less 1¢ that the state retains for cost of administering the Act. Based on current experience, the total will be over \$7,500,000 per year.

Q: How much per capita will a city receive each year?

A: Based on current experience, about \$5.20 per capita per year. Any increase or decrease in state collections will of course affect this figure.

Q: What cities are eligible to receive this money?

A: Any incorporated city or town "charged with the duty of constructing and maintaining streets." The answer in a particular city will depend on its charter.

Q: Is there any minimum population requirement, such as that applying to state sales tax distribution?

A: No

Q: What is the basis of distribution?

A: Population of the city, as shown by the last Federal census.

Q: If a city annexes additional territory, will it receive more money?

A: Yes, if it arranges for a special census by the Federal Bureau of the Census of "in a manner directed by and satisfactory to the Tennessee State Planning Commission."

Q: When will a city begin to receive additional money on account of annexed territory?

A: On July 1 next following certification of the special census results to the State Director of Accounts.

Q: Will a newly incorporated city or town share in this distribution?

A: Yes, if it arranges for a special census by the Federal Bureau of the Census or "in a manner directed by and satisfactory to the Tennessee State Planning Commission."

Q: When will a newly incorporated city or town begin to share in the distribution?

A: On July 1 next following certification of the special census results to the State Director of Accounts.

Q: How often will the money be distributed?

A: Monthly. The first distribution of money collected in July, 1953, will be made in August, 1953. The State Director of Accounts advises that distribution of each month's collections will normally be made about the 10th of the succeeding month.

Q: What is the main purpose of the Act?

A: To furnish money to cities and towns to be used for "street improvements."

Q: How does the Act define "street improvement"?

A: "The term 'street improvement' shall mean construction, reconstruction, improvement, and maintenance of streets, including paving, repaving, grading and drainage, repairs, acquisition of rights-of-way, extension and widening of existing streets, elimination of railroad grade crossings, acquisition of trucks and other equipment necessary in the construction and maintenance of streets, and administrative and other necessary expenses in connection with such street improvements." [Sec. 1(c)]

Q: How does the Act define "street"?

A: "The term 'street' shall include streets, highways, avenues, boulevards, bridges, tunnels or other public ways dedicated to public use and maintained for general public travel lying within a municipality's corporate boundaries, except that this term shall not include State and Federal highways." [Sec. 1(b)]

Q: Does the definition of "street" include sidewalks, curbs and gutters?

A: Yes. "The term street in ordinary legal signification includes all parts of the way, roadway, the gutters and the sidewalks." (Elliott on Roads and Streets (4th ed.), Sec. 23,

Nov. 13, '53
Atty Gen. office
has told Johnson City that
sidewalks are not
included. TMC
has requested
clarification.

Nov. 13
Atty Gen's office
has changed its
mind, says it
money can be
used on sidewalks.

quoted with approval in Blackburn v. Dillon, 189 Tenn. 240, 225 S.W. 2d 46)

Q: Does the definition of "street" include grass plots?

A: Yes. "The street also includes a space within its bounds between the sidewalk and the roadway set apart for a grass plot, and a park down the center of a street has been held to be a part thereof." (McQuillin on Municipal Corporations, Sec. 30.03)

Q: Does the definition of "street" include alleys?

A: Yes. "Streets and alleys are both public ways intended primarily for the use of the public in passing to and fro. For most purposes the only difference between them is in width." (Western Union Telegraph Co. v. Dickson, 27 Tenn. App. 752, 173 S.W. 2d 714)

Q: Does the definition of "street" include storm sewers and drains?

A: The answer appears to be "yes," since these are essential to make the street passable.

"Let it be inquired whether the detail of flushing the storm sewer in this case, though done solely for the preservation of health, was done in the performance of the general duty of preserving health, or done as one of the necessary details in the superin-

tendence and care of the streets. This storm sewer was a subterranean channel constructed by the city to carry away the surface water which came upon the streets. Necessarily the street was so graded and constructed that the water therefrom would collect at the catch-basin which formed a part of the sewer, run into it, and flow away through the channel provided. To the ordinary mind this storm sewer formed a part of the improvement of the street, and pertained primarily to the care of the street. Obviously, as the water flowed into the catch-basin, it would carry with it refuse from the street, some of which would remain. At other times refuse would be blown, or otherwise forced, through the opening into the basin. This refuse would remain to breed disease and noxious odors, if not removed. One more act was necessary to keep the street in a reasonably fit and suitable condition for use, and that act was the flushing of the storm sewer to remove this menace to the health and comfort of the people.... It follows, therefore, that the flushing of that sewer, though done to preserve health and comfort, was not done primarily in the performance of the governmental duty relating to the preservation of health, but was done in the discharge of the general duty of caring for the streets..." (City and County of Denver v. Maurer, 27 Colo. 209, 106 P. 875.)

"...it is provided that the costs of street improvements shall be assessed against abutting lands and lots,...The end to be attained, however, namely, the better preparation of the street for public travel, must evidently determine the nature of the improvement to be made. The mere grading of the street may be deemed sufficient in some instances. Afterwards, it may be thought necessary to raise the center or road bed, and sink gutters along the sides, so as to make a dryer and firmer highway. If the travel increases, graveling may be thought needful. Finally, the board may be of opinion that the street has become so important a thoroughfare that it should be paved with brick or stone. If the ground were low and wet, it would seem that, in connection with any of these improvements, it might be necessary to draw the water from the street by gutters, drains or otherwise, as the board should judge best.... in the complaint...it is said: 'In the plans, specifications, notices, and contract for the said work, there is included, as a part of the same work, and under the same contract, the construction underneath the part of said street so to be improved, for its whole length, a drain or sewer for the pretended purpose of carrying off the surface water from said street which may fall thereon or flow

thereon from neighboring property and cross streets.' Certainly no purpose is here indicated but the improvement of the street. Indeed the complaint **says** elsewhere that the drain is not to be used as an ordinary sewer, no intersections or connections with house or other drains being permitted. It is therefore built exclusively for the improvement of the street, and not, except incidentally, as a sewer." (Kirkland v. City of Indianapolis, 142 Ind. 123, 41 N.E. 374.)

Q: Does the definition of "street" include sanitary sewers and laterals therefrom?

A: We think the answer is "no," but cannot **cite** any specific law on this point. McQuillin on Municipal Corporations, Sec. 30.06, says, "A street includes so much of the depth as may not unfairly be used as streets are used." However, it seems that this statement refers to the depth of land needed and would not include the **sewer** line itself. The construction, maintenance and operation of sanitary sewers constitutes a utility, comparable to water and gas lines; although under a street such utilities do not seem to be a part of the street. A combination storm-sanitary sewer would pose a more difficult question, which might be answered by engineering allocation of costs to **storm** and sanitary purposes, the former perhaps being included as a part of "street" costs.

Q: Does the definition of "street improvement" include removal of dead trees and other similar hazardous objects?

A: Yes. The definition in the Act includes "maintenance of streets." Although no Tennessee case directly in point could be found, the following excerpts from cases in other states support this view:

"Suit by a father for the death of his minor child caused by the falling of a rotten limb from a tree growing between the sidewalk and the curb stone...Municipal liability in the management and control of highways is indicated by the line of general authorities... In 72 A.L.R. 616...it is said: 'The rule is generally recognized that a city is liable for injuries received as a result of the fall of a tree located either in the vehicular or sidewalk area of one of its streets, if it knew of the dangerous condition of the tree...' The same idea is expressed in McQuillin, Municipal Corporations, 2nd ed. p. 142, sec. 2964, to the effect that: 'On the ground, therefore, of failure to exercise ordinary care to keep public ways in a reasonably safe condition for travel, municipal negligence may be established, on the theory of a defect in the street, in action for damages, due to injuries to travelers from awnings, signs, billboards, poles whether owned by the municipality or a public service

company, wires, especially where charged with electricity, or other objects suspended over, or near thereto, or falling into a street or sidewalk.'...We are of opinion that...the City of Montgomery was not engaged in a governmental function, relieving it from liability for tort..." City of Montgomery v. Quinn, Mo. App., 19 So. 2d 529.

"...the plaintiff's wife, with his minor daughter, was driving eastward along Shotwell Street...When the plaintiff's wife and daughter reached a point immediately under the limb of the tree in question, the tree fell without warning, demolishing the automobile and injuring the plaintiff's daughter about the head and shoulders...The 'defects in its streets' for which a municipal corporation may be held liable...have been held to include objects adjacent to, and suspended over, the municipality's streets and sidewalks, the presence of which renders the use of these thoroughfares more hazardous ...the tree had reached such a degree of decay that it constituted a hazard to those using the street and sidewalk at that point and the city should have, in the exercise of ordinary care in keeping its streets and sidewalks in a reasonably safe condition for travel, discovered this decayed, and hence dangerous, condition and had the tree removed." City of Bainbridge v. Cox, 83 Ga. App. 453, 64 S.E. 2d 192

A woman was injured by a falling limb while she was walking on a sidewalk in the center of a parkway 39 feet wide between the two traveled portions of the street. The street was 158 feet wide from property line to property line. "A parkway may be merely an ornamental part of a street, or an ornamented street may be considered a parkway...the walkway in the center of the ornamented portion of the street was a part of the public street...[and]...the jury were authorized to find that the limb was of a size, in such a state of decay, and being in that state of decay must have existed for such a length of time, that the city, in the exercise of ordinary care, could have discovered and removed the decayed limb." Augusta v. Hammock, 85 Ga. App. 554, 69 S.E. 2d 834

Q: Does the definition of "street improvement" or "street" include traffic paint?

A: We think the answer is "yes," because the paint when applied becomes physically a part of the street. It is as much a part of the surface as an asphalt topping.

Q: Does the definition of "street improvement" or "street" include street name signs?

A: We think the answer is "no," as the

signs are not a part of the surface required to make a public way for passage by the public.

Q: Does the definition of "street improvement" include plans and surveys?

A: Yes. The expenses of planning and surveying street needs are undoubtedly "necessary expenses in connection with...street improvements" (see definition already quoted).

Q: May the money be used to purchase a trailer for hauling a road roller?

A: Yes. "Street improvement" is defined to include "acquisition of trucks and other equipment necessary in the construction and maintenance of streets."

Q: May the money be used to pay the salary of street personnel?

A: Yes. But in case of personnel assigned to street work only part-time, any salary paid from this money must relate to actual time spent on such street work, as supported by proper records.

Q: May the money be used for street lights, traffic signs and traffic signals?

A: We find no law on this point, but we think that such purposes are not authorized by the Act.

According to
Mr. Miller
8/30/56

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atty
Gen'l's
Ruling
To
State
Comptroller

Q: May the money be used to pay principal and interest on bonds issued or other indebtedness incurred before July 1, 1953?

A: No. But it may be used to pay principal and interest on bonds issued or other indebtedness incurred after July 1, 1953, if the money so borrowed is used for purposes defined in the Act.

Q: May the money be used for street work commenced before July 1, 1953, but to be paid for after this date?

A: No. The city would be indebted to pay for such work prior to July 1, 1953, because it incurred the obligation to pay before that date, and the Act permits use of the money only to pay "indebtedness incurred...after the effective date of this Act."

Q: May the money be specifically pledged as security for bonds or other indebtedness to carry out the purposes of the Act?

A: Yes.

Q: May the money be spent on State or Federal highways within the corporate limits of a city or town?

A: No, except that the city may spend such money for:

- (1) The city's part of the cost of grade eliminations on State or Federal highways.
- (2) Not to exceed one-third of the total costs of rights-of-way for State or Federal highways.
- (3) The municipality's part of the cost of acquiring rights-of-way for approaches to bridges and tunnels.

Q: By what methods may a city accomplish the purposes of the Act?

- A:
- (1) By its own employees
 - (2) By contract with private contractors, subject to the usual bid and contract award requirements
 - (3) By paying the State Department of Highways, a county road or highway department, or another municipality, under an agreement therefor.

Q: Does the Act require a city to set up a special fund?

A: Yes, it requires each city or town to account for the money in a special fund called the "State Street Aid Fund."

Q: What are the accounting requirements for the State Street Aid fund?

A: That all receipts into and expenditures out of the fund be recorded "in accordance with sound municipal accounting practices." The Manual of Accounts for Tennessee Municipalities, distributed by MTAS to all cities and towns in 1951, should be used as a guide in setting up accounts for the State Street Aid Fund (see page 35, Section e). MTAS will furnish assistance on this problem if requested to do so.

Q: Specifically what accounts will be needed in this State Street Aid Fund?

A: Sufficient accounts are provided in the Manual of Accounts to record adequately the transactions in this fund. Merely select those accounts from the Manual suitable to specific needs by each municipality. For example,

Assets - see pp. 18-19 Codes 00-57
 Liabilities - see p. 20 Codes 60-96
 Revenue - see p. 21 Code 141.5
 Expenditures - see p. 25 Codes 510, 520, 530.

Q: Does the Act require an annual audit of the State Street Aid Fund?

A: Yes. It requires each municipality to have an audit made by a certified public accountant at the end of each fiscal year. One copy of each year's audit report, signed by the auditor, must be filed with the State Comptroller.

Audit must be made by a CPA holding a Tennessee certificate. (says Chaffin)

Audit cost may be charged to State Street Aid Fund (says Chaffin)

Q: Is there a penalty for misuse of the money?

A: Yes. Any municipal official or employee who authorizes, directs or permits the expenditure of any money in the State Street Aid Fund for any purpose other than those authorized by the Act shall be guilty of a misdemeanor and shall be personally liable for any such unauthorized expenditure.

Sects. 54-406 — 54-410

PUBLIC CHAPTER NO. 1

HOUSE BILL NO. 106

By

BRYSON

AN ACT to provide State Funds to municipalities for street rights-of-way, street improvements, street maintenance, and the manner of distributing such funds, keeping, expending and accounting for such funds, and penalties for the violation of this Act.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, That the following terms whenever used or referred to in this Act shall have the following meaning, unless a different meaning appears from the context.

(a) The term "Municipality" shall mean any incorporated city or any incorporated town charged with the duty of constructing and maintaining streets within its corporate boundaries.

(b) The term "Street" shall include streets, highways, avenues, boulevards, bridges, tunnels or other public ways dedicated to public use and maintained for general public travel lying within a municipality's corporate boundaries, except that this term shall not include State and Federal highways.

(c) The term "street improvement" shall mean construction, reconstruction, improvement, and maintenance of streets, including paving, repaving, grading and drainage, repairs, acquisition of rights-of-way, extension and widening

of existing streets, elimination of railroad grade crossings, acquisition of trucks and other equipment necessary in the construction and maintenance of streets, and administrative and other necessary expenses in connection with such street improvements.

(d) The term "municipal street aid fund" shall mean the funds provided for municipalities by the provisions of this Act.

SECTION 2. BE IT FURTHER ENACTED, That there is appropriated to the eligible municipalities within the State of Tennessee from the proceeds of the State gasoline tax and motor vehicle fuel tax, imposed by Section 1126, et seq., SUPPLEMENT TO the TENNESSEE CODE, 1950, and Section 1148.5 of said Code Supplement, respectively, in excess of the amounts required to be paid into the Sinking Fund of the State of Tennessee under the provisions of Chapter No. 165, Public Acts of 1937, and subsequent Acts, and after payment of the two (2¢) cents per gallon share of said tax to Counties, as provided by Sections 1148.6 and 3291.2 of Tennessee Code Supplement, 1950, a sum equal to the proceeds of one (1¢) cent of said State gasoline tax and motor vehicle fuel tax, which shall be deposited monthly in a municipal street aid fund to be distributed to the municipalities as provided in Section 3 hereof.

Provided, however, that before any distribution is made to municipalities under this Act there shall be deducted one per cent (1%) for the cost of collection and administration, in the same manner and deductions are made in distributions to counties as provided by Section 1141 of the 1950 Supplement to the Code of Tennessee.

SECTION 3. BE IT FURTHER ENACTED, That funds in the municipal street aid fund shall be distributed to eligible municipalities within the State monthly by the director of accounts, or such other official as now or may be hereafter charged with the duty of allocating or distributing State Funds, in proportion as the population of each municipality bears to the aggregate population of all municipalities according to the 1950 Federal Census or any subsequent Federal Census; provided, however, that in the case of any area annexed to a municipality subsequent to the latest Federal Decennial Census the municipality may have a special census within the annexed area taken by the Federal Bureau of the Census or in a manner directed by and satisfactory to the Tennessee State Planning Commission, in which case the population of the municipality shall be revised and increased in accordance with the special census for purposes of distributing such funds, effective on the first of the next July following the certification of the census results to the director of accounts; and provided, further, that the aggregate population of all municipalities used as a base for calculating such distribution shall be adjusted in accordance with any such special census, effective the same date as aforesaid. Any eligible municipality incorporated after the last Federal Decennial Census may likewise have a special census taken and shall share in the distribution of the municipal street aid fund beginning on the first of the next July following certification of the census results to the director of accounts; the aggregate population shall likewise be adjusted in accordance with any such special census, effective the same date as aforesaid.

SECTION 4. BE IT FURTHER ENACTED, That (a) each municipality shall keep all funds received from the municipal street aid fund in a separate fund, designated as "State Street Aid Fund," and may expend such funds only for one or more of the following purposes:

- (1) Street improvements.
- (2) Principal and interest on Bonds or other indebtedness incurred to pay for street improvements issued after the effective date of this Act. Such funds may be specifically pledged as security for such Bonds or other indebtedness.
- (3) The municipality's part of the cost of acquiring rights-of-way for approaches to bridges and tunnels.
- (4) To pay the City's part of the cost of grade eliminations on streets and highways, including State and Federal highways.
- (5) Not to exceed one-third of the total costs of rights-of-way for State or Federal highways within the municipality's corporate boundaries.

(b) No part of such funds shall be expended on State or Federal highways within a municipality's corporate boundaries, except as otherwise provided in this Section.

(c) A municipality in its discretion may use such funds to pay for street improvement work by the State Department of Highways and Public Works or by a County Highway or Road Department or by another municipality, performed under an agreement

with the State, County or municipality.

Sect. 6-801
TCA

(d) Each municipality shall keep records of receipts into and expenditures from its State Street Aid Fund, in accordance with sound municipal accounting practices, and shall have made at the end of each fiscal year an audit of the accounts of said Fund by a certified public accountant and shall submit one certified copy of such audit to the Comptroller of the Treasury of the State to be reviewed for compliance with the provisions of this Act.

requires
annual
audit of
all funds,
& Sect.
6-804
requires
publication
of a
summary
of audit.

SECTION 5. BE IT FURTHER ENACTED, That it shall be unlawful and a misdemeanor for any municipal officials or employees to authorize, direct or permit the expenditure of such funds for any purpose except those authorized by this Act. Any municipal official or employee who violates this provision shall be personally liable for any unauthorized expenditure of said funds.

SECTION 6. BE IT FURTHER ENACTED, That all Acts or parts of Acts in conflict with the provisions of this Act be, and the same hereby are repealed.

SECTION 7. BE IT FURTHER ENACTED, That if any Section, provision or part of this Act shall be held unconstitutional such holding shall not affect the remaining Sections, provisions or parts thereof.

SECTION 8. BE IT FURTHER ENACTED, That this Act take effect from and after July 1, 1953, the public welfare requiring it.

Passed: February 19, 1953

James L. Bomar
SPEAKER OF THE HOUSE OF REPRESENTATIVES

Jared Maddux
SPEAKER OF THE SENATE

Frank B. Clement
GOVERNOR

Approved:
Feb. 19, 1953

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